Chapter 2
Investigation Procedures and Practices

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by letter, by post or by fax, or on our postage-free complaint form. They may also be made by telephone for simple initial cases involving not more than two organisations.

2.2 We also accept complaints via email. However, unless they are digitally signed under proper electronic certification, we have to respond by post to ensure security of the information, as required by the secrecy provision in section 15 of the Ordinance.

Assessment

2.3 Our Assessment Team vets all incoming complaints to ascertain whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. Essential elements include such information as the organisation and the matter under complaint, basic details of time and persons involved as well as reasons for grievance.

2.4 Where The Ombudsman decides not to pursue a case, we aim to notify complainants within 15 working days (see **Annex 3** for our performance pledges). For complaints “screened out” because the complainants are anonymous or unidentifiable, we do not discard them but examine them for any pattern of systemic or systematic maladministration. This may at times prompt topics for direct investigation (see **paras. 2.13 – 2.18**).

2.5 Complaints “screened in” go to one of our five investigation teams for preliminary inquiries, resolution by mediation, or investigation.

Preliminary Inquiries

2.6 We often conduct preliminary inquiries before determining whether a full investigation is necessary. Such inquiries may come under our Internal Complaint Handling Programme ("INCH") or take the form of Rendering Assistance/ Clarification ("RAC"), as outlined in **Fig. 2.1**.

Mediation

2.7 With the voluntary consent of both the complainant and the organisation concerned, The Ombudsman may try to settle cases by mediation. This alternative dispute resolution method is suitable for cases involving only minor or no maladministration. The two parties meet to explore a mutually acceptable solution to the matter under complaint, with our trained investigators acting as objective mediators.

2.8 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigator to initiate preliminary inquiries or a full investigation.

Full Investigation

2.9 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, The Ombudsman will order a full investigation.

2.10 This involves extensive and intensive probing for evidence. Apart from examining documents, we may summon witnesses, counter-check data with the complainant and go on site inspections. Where necessary, we will consult members of our Panel of

Fig. 2.1

Preliminary Inquiries	
Type	**Method**
INCH	With the complainant's consent, a relatively simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request specific information from the organisation, monitors progress and scrutinises the reply, intervening where it is not satisfactory. In this event, we may take up the case by RAC or full investigation.
RAC	The Office collects key facts relating to the case. If the facts fully explain the matter under complaint, we will present the findings with observations to the complainant and suggestions to the organisation concerned for remedy and improvement, where appropriate. If further inquiries are called for, we may conduct a full investigation (see **para. 2.9**).

Professional Advisers, who are all experts with good standing in professional fields (see **Annex 4**).

2.11 When we have completed an investigation, we will invite comments on our draft report from the organisation(s) concerned and any individual(s) criticised or adversely affected. When finalised, the report will be presented to the complainant for information and to the head(s) of the organisation(s) for implementation of our recommendations.

2.12 In our investigation reports, complaints are classified according to how far the allegations of maladministration are well founded: "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts or aspects of maladministration are identified. These are then classified as "substantiated other than alleged". The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 5**).

Direct Investigation

2.13 Under the Ordinance, direct investigations ("DI") in the absence of complaints enable The Ombudsman to review matters of moment at a macro level, as opposed to individual cases. Essentially, this means examining systems with systemic or widespread deficiencies.

Selection of Issues

2.14 A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters. These include cases which may have been "screened out" during our assessment process but which show some pattern of systemic problems or systematic maladministration (see **para. 2.4**).

DI Assessment

2.15 Before we formally launch a DI, we may conduct an initial assessment ("DI assessment"). For this purpose, we research public information from annual reports and websites, legislation and media reports, as well as information from the organisation(s) direct. If such assessment points to the need for further study, we will formally notify the head(s) of the organisation(s) and initiate a DI.

2.16 Where our DI assessment finds no significant maladministration or proactive improvement has been made by the organisation(s) concerned, we will not initiate a DI. We will simply conclude it as a "mini-DI" and offer our findings to the organisation(s) for comments. Such report outlines the background to the issue, an appraisal of public concern, together with our observations on the role and the action of the organisation(s) concerned. Where appropriate, we make recommendations for improvement.

Investigation Methodology

2.17 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, it is our established practice to declare publicly our initiation of DIs and invite views from relevant sectors and experts as well as the community at large. Findings are then announced at

media conferences. This is justified as the subjects are invariably of public interest. Such reports form part of the library stock in our Resource Centre (see **Chapter 6**).

2.18 In the course of our investigation, we often discuss the issues and the preliminary draft face-to-face with senior officers of the organisation(s). Such liaison sessions are useful in clarifying points for incorporation into our report.

Implementation of Recommendations

2.19 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation(s) concerned aim to make for more open and client-oriented service, transparent and accountable processes and practices. However, where policies are found outdated or inequitable, The Ombudsman may also offer some comments, even though they are generally not matters for our investigation.

2.20 Heads of organisations have a duty to report at regular intervals their progress of implementation. We will monitor and keep track by correspondence.

2.21 Unlike Court verdicts, The Ombudsman's recommendations are not binding. Nevertherless, where the head of the organisation disagrees with her findings or refuses to accept her recommendations, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Similarly, where an organisation fails to implement or to act adequately on any recommendation, The Ombudsman may also report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

Secrecy Requirement and Publication of Reports

2.22 The Ombudsman, her staff and the Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy in respect of all matters that come to our knowledge in the exercise and execution of our functions. This is to ensure that any person or organisation providing information to our Office can do so without reserve or fear of reprisal from the disclosure of their identity or related data.

2.23 It is our firmly established practice not to respond to any enquiry from third parties on individual complaints. However, The Ombudsman may publish anonymised reports on complaint investigation, where she considers that it is in the public interest to do so.